intend to use rulemaking proceedings to determine spectrum limits. Rather, because competitive GSO-like satellite systems can operate in the same spectrum, we intend to assign qualified applicants to their requested spectrum, subject to additional limits to prevent speculation and warehousing. We conclude that this adequately addresses Boeing's and Hughes's concern.

C. Opportunities for Competitive Entry for GSO-Like Satellite Systems

77. *Background.* In this Section, we explain why the procedure we adopted for NGSO-like satellite system applications is not well suited for GSO-like satellite system applications. We also conclude that the issue that persuaded us that a first-come, first-served procedure is not appropriate for NGSO-like satellite system applications -- the possibility of unreasonably limiting additional market entry -- is more easily addressed in the context of GSO-like satellite system applications.

78. *Discussion.* PanAmSat claims that a band segmentation approach for GSO FSS satellite applications would limit satellite operators to a fraction of the frequencies in the band, and would not allow them to develop a viable business.[181] PanAmSat raises a good point. Unlike the case of NGSO-like satellite systems,[182] splitting spectrum at a single orbit location among several processing round participants would not give any of the applicants adequate spectrum in many cases, particularly when there are many participants in the processing round.[183] Furthermore, an applicant would require several transactions to acquire the spectrum needed for a viable service, and completing all those transactions would necessarily take a great deal of time. Accordingly, we conclude that the first-come, first-served procedure is better-suited for GSO-like satellite systems than the modified processing round approach.[184]

79. We also find here that the concerns that lead us to reject the first-come, first-served procedure for NGSO-like satellite systems do not apply to GSO-like satellite systems. We observed above that several parties criticized our proposal for preventing a lead applicant from applying for an excessive amount of spectrum in a first-come, first-served procedure, and thereby

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[181] PanAmSat Comments at 13.

[182] Section V.C.1.

[183] For example, there were 13 participants in the first Ka-band processing round. *See* Assignments of Orbital Locations to Space Stations in the Ka-band, *Order*, 11 FCC Rcd 13737 (Int'l Bur. 1996).

[184] Although we find that the band-splitting approach in the modified processing round procedure is not well suited to GSO-like satellite system applications, we adopt this approach for resolving mutually exclusive situations among two or more GSO-like applications filed at the same millisecond. Section VI.E.2. This is because a significant factor weighing against the modified processing round procedure for GSO-like satellite system applications are less of a concern when we use this approach as a second-tier selection mechanism in a first-come, first-served procedure. Specifically, splitting the band equally among multiple applicants for a single GSO orbit location in a modified processing round, applicants may need to engage in several transactions to acquire enough bandwidth for a viable service. On the other hand, applying the band-splitting approach to GSO-like satellite systems only as a second-tier selection mechanism should mean that we use this procedure for that kind of application very rarely, and in those cases, the bandwidth should be divided equally between only two applicants. Thus, if a licensee is authorized to operate with what it considers to be an insufficient amount of bandwidth, it should need only one transaction to obtain the bandwidth it desires.

preclude additional market entry.[185] We also concluded above that we cannot adopt a first-come, first-served procedure for NGSO-like satellite system applications because it would either allow an applicant to request so much spectrum as to preclude additional entry, or require us to determine the amount of spectrum needed to provide a service in a processing round.[186] These concerns do not apply to GSO-like satellite applications because assigning a frequency band segment to one licensee at one orbit location does not preclude other licensees from using the same frequency band segments at other orbit locations, or to use other frequency band segments at the same orbit location. Moreover, we adopt additional safeguards in this Order below. First, we limit the number of pending applications each applicant may have in any frequency band.[187] Second, we adopt default service rules for GSO-like satellite system applications based on our two-degree-spacing policy, to facilitate additional entry into the market.[188]

D. General Comments

1. Introduction

80. Several parties opposed the proposed first-come, first-served procedure. With respect to GSO-like satellite systems, however, those parties do not raise persuasive reasons for rejecting this proposal. We explain our conclusion in detail below.

2. Spectrum Efficiency

81. *Background.* Several parties contend that processing rounds facilitate the development of efficient spectrum sharing plans and methods to accommodate more satellites.[189] Teledesic counters that the first-come, first-served approach encourages later applicants to develop methods to share with existing licensees.[190]

82. *Discussion.* As an initial matter, we will use our two-degree-spacing standards for GSO-like satellites in new frequency bands, in the absence of frequency band-specific service rules.[191] The Commission has explained how its two-degree spacing requirements have lead to efficient use of the C-band and Ku-band.[192] Nothing in the first-come, first-served procedure will

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185 Section V.B., *citing* Boeing Comments at 7-8; Hughes Comments at 34; SES Americom Comments at 6-7; Telesat Comments at 3.

186 Section V.B.

187 Section VII.E.

188 Section VI.E.1.d.

189 SIA Comments at 6-8; SES Americom Comments at 7; Final Analysis Comments at 2-3; Boeing Comments at 5; PanAmSat Reply at 2-3; Orbcomm Reply at 2-3.

190 Teledesic Reply at 25.

191 Section VI.E.1.d.

192 Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations, *Report and Order*, CC Docket No. 81-704, FCC 83-184, 54 Rad. Reg. 2d 577 (released Aug. 16, 1983); Licensing Space Stations in the Domestic Fixed-Satellite

affect the Commission's technical requirements for satellites. Further, by enabling us to issue licenses more quickly, the first-come, first-served approach will lead to more efficient spectrum use than is now possible under our current procedure, by reducing the amount of time spectrum lies fallow.

83. Moreover, assuming for the sake of argument that the current processing round procedure does result in more efficient spectrum use than the first-come, first-served procedure we adopt here, we would still conclude that the first-come, first-served procedure furthers the public interest more effectively than the current procedure. We believe that any marginal increase in public interest benefit that could result from the current processing round procedure would be outweighed by the additional months or years that the current procedure delays service to the public.

3. Speculative Applications

84. *Background.* PanAmSat and Boeing liken the first-come, first-serve proposal to the ITU notification procedure, and maintain that speculation is a serious problem in that procedure.[193] Several parties doubt that the Commission's proposals to limit speculative or frivolous applications in a first-come, first-served procedure are adequate.[194] SES Americom maintains that satellite applicants intending to construct their proposed systems need protection from speculative satellite applicants, particularly applicants proposing multiple-satellite systems.[195]

85. In contrast, Teledesic argues that the first-come, first-served approach discourages speculation by enabling the Commission to act on all applications quickly,[196] and by substantially reducing the incentives to file applications as a "place holder" or to block a competitor's application.[197] Teledesic argues further that a queue would reduce the number of speculative applications by requiring applicants to perform interference studies and develop any needed sharing strategies before they file their applications.[198] SES Americom replies that applicants in a first-come, first-served approach have no incentive to develop sharing strategies with other applicants later in the queue.[199] SES Americom also contends that a first-come, first-served

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Service, 48 F.R. 40233 (Sept. 6, 1983) (*Two Degree Spacing Order*) (two-degree spacing adopted to maximize the number of satellites in orbit).

193 PanAmSat Comments at 7-8; Boeing Comments at 9.

194 SIA Comments at 22-25; SES Americom Comments at 3; Final Analysis Comments at 3; Inmarsat Comments at 7-8; Boeing Comments at 5; Hughes Comments at 25-27; PanAmSat Comments at 5-6; Pegasus Comments at 2-3; SES Americom Reply at 4-5; PanAmSat Reply at 3; CTIA Comments at 4-5.

195 SES Americom Comments at 4.

196 Teledesic Comments at 27-28.

197 Teledesic Reply at 18-19.

198 Teledesic Comments at 9-10.

199 SES Americom Reply at 6-7.

approach would discourage satellite operators from developing sharing strategies before they file their applications, because it could require an applicant to reveal its business plans to a competitor and enable that competitor to apply for that orbital location first.[200]

86. *Discussion.* Both Teledesic and other commenters are correct, in that both processing rounds and the first-come, first-served procedure create incentives for speculation. Thus, we disagree with parties who argue that a first-come, first-served procedure will necessarily increase the incentives for filing speculative satellite applications. In addition, although giving licensees flexibility to propose and implement new or innovative satellite systems will always create some potential for speculation, we adopt safeguards that should substantially reduce that potential. These safeguards include limiting the number of licensed but unbuilt satellite systems, adopting new milestones, including a bond-posting requirement, and strictly enforcing milestones.[201] Accordingly, we conclude that the mere possibility of some speculation in a first-come, first-served procedure does not by itself justify rejection of the first-come, first-served procedure for satellite applications.

4. Influx of Applications

87. *Background.* A number of parties assert that, if the Commission establishes a first-come, first-served licensing procedure, it would be difficult to address a large influx of satellite applications because those applications can be complex and the Commission would need to address multiple queues.[202] Teledesic argues that this problem could be resolved if the Commission considers all applications in the order they are filed, and create a single queue for all satellite applications, rather than establish a separate queue for each orbit location.[203] Specifically, Teledesic denies the premise that applications will form themselves easily into identifiable groups of mutually exclusive applications for particular orbit locations.[204] Rather than making the difficult determination of which application should be placed in which queue, Teledesic recommends creating a single queue, and granting all qualified applications for satellites that would not cause harmful interference to any previously licensed satellite.[205]

88. *Discussion.* We agree that a large influx of satellite applications could be problematic if it overwhelms our electronic filing system. We conclude, however, that this possibility does not justify rejecting the first-come, first-served procedure. First, any problem that occurs would occur only at the time the first-come, first-served rules take effect. Second, we hereby adopt measures to mitigate any problem that may occur. We adopt Teledesic's proposal in modified form, and will maintain one queue. We discuss this queue in detail below.[206] Here, we

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200 SES Americom Reply at 7.

201 Sections VII.E.3, VII.C.

202 SES Americom Comments at 9; PanAmSat Comments at 8; Boeing Comments at 8-10; SES Americom Reply at 4.

203 Teledesic Reply at 20-21.

204 Teledesic Reply at 20.

205 Teledesic Reply at 21.

206 Section VI.E.1.a.

conclude that eliminating the complexity caused by maintaining a separate queue for each orbit location sufficiently addresses the concern that the Commission might have difficulty with a large influx of applications.

89. Furthermore, we will adopt a freeze on all satellite applications, starting with the adoption of this Order, and ending on the date a summary of this Order is published in the Federal Register. This will give us additional time to ensure that our electronic filing system is sufficient for any influx of applications that may develop. Courts have recognized the Commission's authority to adopt application freezes.[207] Moreover, freezes on application filing are procedural in nature and hence are not subject to the notice and comment requirements of the Administrative Procedure Act.[208]

90. Finally, the rule revisions in Appendix B will generally take effect upon publication in the Federal Register, rather than 30 days after publication. This is consistent with our actions when we adopted a first-come, first-served procedure with a one-day cut-off rule for the multipoint distribution service (MDS).[209] In the *MDS Order*, we concluded that cut-off rule was a procedural rule that could take effect on less than 30 days notice.[210] We concluded further that preventing speculation constituted good cause to make the rule revisions take effect upon publication in the Federal Register.[211]

5. ITU Issues

91. *Background.* SIA and SES Americom assert that a first-come, first-served approach would limit the number of companies participating in the ITU spectrum allocation process, because a first-come, first-served approach would substantially reduce the number of applicants receiving licenses.[212] Similarly, Boeing asserts that a first-come, first-served approach would

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[207] *See, e.g.*, Neighborhood TV Co. v. FCC, 742 F.2d 629, 637-38 (D.C. Cir., 1984) and *Kessler v. FCC*, 326 F.2d 673, 680-82 (D.C. Cir., 1963).

[208] Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(B). The Commission has previously found that, in cases where it adopts a new licensing procedure, it may be necessary to adopt temporary licensing freezes to prevent applicants from using the old licensing procedures to engage in speculative activity prior to the effectiveness of the new rules. Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22737-38 (paras. 60-61) (2000).

[209] Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting Private Operational-Fixed Microwave Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Gen. Docket Nos. 90-54 and 80-113, 5 FCC Rcd 6410, 6424 (para. 90) (1990) (*MDS Order*).

[210] *MDS Order*, 5 FCC Rcd at 6441 n.73.

[211] *MDS Order*, 5 FCC Rcd at 6441 n.73.

[212] SIA Comments at 8-9; SES Americom Comments at 6. *See also* Intelsat Comments at 10 (applying a version of a first-come, first-served approach to services without frequency allocations or service rules would place the burden of championing service rules or frequency allocations on one applicant).

limit the number of ITU submissions that the Commission could file.[213] Hughes and Boeing argue that the ITU submission for a lead applicant could limit the options of subsequent parties if the lead applicant fails by requiring the subsequent party to operate within the technical parameters of the first licensee's application.[214]

92. *Discussion.* None of the parties' concerns regarding the ITU persuade us to reject the first-come, first-served procedure. First, SIA and SES Americom are mistaken in assuming that a first-come, first-served approach would substantially reduce the number of applicants receiving licenses relative to processing rounds. We will generally require GSO-like satellite systems to be two-degree-compliant, allowing us to license multiple satellites that will use the same spectrum. Therefore, it seems likely the same number of satellites will be licensed under a first-come, first-served procedure as would be in a processing round. Furthermore, because we expect to grant the same number of satellite applications, we disagree with Boeing that the first-come, first-served procedure will limit U.S. ITU submissions.

93. Finally, we do not agree with Hughes or Boeing that the ITU submission for a lead applicant could limit the options of subsequent parties if the lead applicant fails. Under the processing round procedure, if a license is revoked and the orbit location is reassigned, the new licensee is required to meet the specifications of the original ITU filing or file a new ITU filing, and assume any subsequent ITU costs associated with that filing.[215] This will not change under the first-come, first-served procedure we adopt today.

6. Uncertainty

94. A number of commenters maintain that any major revision of the satellite licensing procedure could cause uncertainty and could lead to litigation over the details of the new procedure.[216] Even if this is true, it does not justify keeping an inefficient processing system in place.

7. Non-U.S.-Licensed Satellites

95. *Background.* Inmarsat argues that the first-come, first-served approach does not adequately consider whether the lead applicant is requesting a license for an orbital location for which the United States has ITU priority, and so could unreasonably preclude some non-U.S. satellite operators from entering the U.S. market.[217]

96. *Discussion.* As is the case now in processing rounds, U.S. licensees assigned to a particular orbit location in a first-come, first-served approach take their licenses subject to the outcome of the international coordination process. The Commission is not responsible for the outcome of any particular satellite coordination and does not guarantee the success or failure of

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213 Boeing Comments at 6.

214 Hughes Comments at 32-33; Boeing Comments at 6-7.

215 We do not require new licensees under these circumstances to reimburse the original licensee for ITU fees or any other fees, however.

216 Hughes Comments at 23-24; Pegasus Comments at 3; PanAmSat Reply at 3.

217 Inmarsat Comments at 4-7.

the required international coordination.[218] Moreover, we expect U.S. licensees to abide by international regulations when their systems are coordinated. This may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed. Indeed, with the first-come, first-served approach, we assign applicants to the orbit location that is requested. Consequently, the applicant assumed the coordination risk when choosing that particular orbit location at the time it submitted its application.

8. Disadvantage in Non-U.S. Markets

97. *Background.* Final Analysis contends that, if the Commission adopts a first-come, first-served approach, it might encourage other countries to adopt this approach. Final Analysis further speculates that some foreign Administrations might implement their first-come, first-served procedures in a way that gives an unfair advantage to their foreign government-controlled satellite operators.[219]

98. *Discussion.* Even assuming that our actions in this Order might induce more countries to adopt a first-come, first-served procedure, there is no evidence that U.S. satellite operators would be disadvantaged. We note that several countries already use a first-come, first-served procedure, and no U.S. operators have claimed to be disadvantaged in those countries. Further, there are safeguards in place to discourage governments from favoring their own providers. Under the World Trade Organization (WTO) Basic Telecom Agreement, WTO signatories are required to treat service providers from other signatories no less favorably than their own service providers.[220] This requirement applies to any WTO signatory adopting a first-come, first-served procedure for satellite licenses. Furthermore, we have procedures in place now that preclude operators of satellites licensed by non-WTO signatories from entering the U.S. market unless they can show that their licensing procedures do not distort competition by creating *de facto* or *de jure* barriers for U.S.-licensed satellite operators trying to enter that country's market.[221]

9. Legal Analysis

a. Background

99. In the *Space Station Reform NPRM*, the Commission noted that the processing round process was developed in response to *Ashbacker*, a 1945 Supreme Court case.[222] In *Ashbacker*,

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[218] Pegasus Development Corporation, Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 16 FCC Rcd 14378, 14386 (para. 24) (Int'l Bur., 2001).

[219] Final Analysis Comments at 2.

[220] *See* Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094, 24103 (para. 22) (1997) (*DISCO II*), and sources cited therein.

[221] *DISCO II*, 12 FCC Rcd at 24127-28 (paras. 72-73).

[222] *Space Station Reform NPRM*, 17 FCC Rcd at 3868-69 (para. 62), *citing* Ashbacker v. FCC, 326 U.S. 327 (1945) (*Ashbacker*).

the Court interpreted the hearing requirement in Section 309 of the Communications Act[223] to require the Commission to consider two mutually exclusive applications, both of which had been accepted for filing, in a comparative hearing before granting one and denying the other.[224] At the time the Commission adopted the current processing round procedure, in 1983, it interpreted *Ashbacker* as permitting a cut-off procedure to preserve the rights of all existing applicants and all potential future qualified space station license applicants with concrete proposals for satellite systems.[225]

100. As the Commission explained in the *Space Station Reform NPRM*, it subsequently recognized that the first-come, first-served procedure also meets the *Ashbacker* requirements.[226] Specifically, the Commission observed that *Ashbacker* allows it to promulgate regulations limiting the filing rights of competing applicants, and leaves to the Commission's discretion the circumstances under which applications are considered mutually exclusive.[227] The Commission also observed that the Supreme Court's discussion in *Storer* is consistent with our first-come, first-served proposal.[228] In *Storer*, a broadcast license applicant argued that Section 309 required the Commission to consider its application even though granting the application would cause the applicant to exceed the Commission's limit on the number of broadcast stations that could be held by one party.[229] The Court held that the hearing requirement in Section 309 does not require the Commission to consider applications that are inconsistent with its rules.[230]

101. Hughes and other parties question the legal analysis of a first-come, first-served procedure in the *Space Station Reform NPRM*. For the reasons set forth below, none of the parties have convinced us that our analysis is incorrect.

b. Consistency with Communications Act

102. *Background.* Hughes asserts that the first-come, first-served approach is inconsistent with the Communications Act, based on an assumption that the Commission's

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223 47 U.S.C. § 309.

224 *Space Station Reform NPRM*, 17 FCC Rcd at 3868-69 (para. 62), *citing Ashbacker*, 326 U.S. at 330-31.

225 *Space Station Reform NPRM*, 17 FCC Rcd at 3868-69 (para. 62), *citing 1983 Cut-Off Order*, 93 FCC 2d at 1261 (para. 2).

226 *Space Station Reform NPRM*, 17 FCC Rcd at 3869 (para. 63), *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19938-39 (para. 16).

227 *Space Station Reform NPRM*, 17 FCC Rcd at 3869 (para. 63), *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19939 (para. 16), *Ashbacker*, 326 U.S. at 333 n.9; MCI Airsignal International, Inc., FCC 84-397 (released Aug. 17, 1984).

228 *Space Station Reform NPRM*, 17 FCC Rcd at 3869 (para. 64), *citing* United States v. Storer Broadcasting Co., 351 U.S. 192 (1956) (*Storer*).

229 *Space Station Reform NPRM*, 17 FCC Rcd at 3869 (para. 64), *citing Storer*, 351 U.S. at 193.

230 *Space Station Reform NPRM*, 17 FCC Rcd at 3869 (para. 64), *citing Storer*, 351 U.S. at 202-04; National Broadcasting Co. v. United States, 319 U.S. 190, 230 (1943).

proposed procedure would result in issuing licenses without a public interest inquiry.[231] Hughes also cites court cases which it claims require the Commission to give parties an opportunity to file applications to be considered together with a lead application.[232] Teledesic and Intelsat question Hughes's legal analysis.[233]

103. *Discussion.* We agree with Teledesic's interpretation of *Ashbacker* and its progeny. In particular, as Teledesic points out, we have considered and rejected arguments that *Ashbacker* or the Communications Act requires the Commission to give parties an opportunity to file mutually exclusive applications.[234] Moreover, we have not always issued satellite licenses pursuant to processing rounds. For example, we used a *de facto* first-come, first-served procedure, without processing rounds, for the first decade during which we accepted commercial satellite applications.[235] We also considered separate system satellites outside of processing rounds until 1996, when we adopted a unified licensing framework for domestic and international satellites.[236] Moreover, we consider replacement satellite applications outside of processing rounds.[237] This practice includes applications for replacements of conventional C-band or Ku-band satellites seeking authority to operate in the extended C-band or extended Ku-band,

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231 Hughes Comments at 9-11, 20-21. *See also* SES Americom Reply at 5-6.

232 Hughes Comments at 12-14, *citing* United States v. Storer Broadcasting Co., 351 U.S. 192 (1956), Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991).

233 Teledesic Reply at 5-13, *citing, e.g., Ashbacker*, 326 U.S. at 333 n.9, FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940) (*Pottsville Broadcasting*); Intelsat Comments at 12 n.28; Intelsat Reply at 3, *citing* 47 U.S.C. § 309(e), Hispanic Information & Telecommunications Network v. FCC, 865 F.2d 1289, 1294 (D.C. Cir. 1989).

234 Teledesic Reply at 13-15, *citing* Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing the Use of Frequencies in the 2.1 and 2.5 GHz Bands, *Order on Reconsideration*, Gen. Docket Nos. 90-54 and 80-113, 6 FCC Rcd 6764, 6776 (paras. 61-62) (1991) (*Wireless Cable Reconsideration Order*) (denying petitions for reconsideration claiming that licensing procedure violated the Communications Act because it effectively deprives applicants from filing mutually exclusive applications).

235 *See Space Station Reform NPRM*, 17 FCC Rcd at 3849 n.3, and Orders cited therein.

236 The Commission adopted a unified licensing framework in Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, CC Docket No. 95-41, 11 FCC Rcd 2429 (1996) (*DISCO I Order* or *DISCO I*). The term "separate system" referred to international satellite systems separate from INTELSAT. *See* Establishment of Satellite Systems Providing International Communications, Report and Order, CC Docket No. 84-1299, 101 FCC 2d 1046, 1174 (1985) (*Separate Systems Order*), *recon.* 61 Rad.Reg.2d 649 (1986), *further recon.* 1 FCC Rcd 439 (1986).

237 *See, e.g.*, Loral Space & Communication Ltd., f/k/a Orion Atlantic, L.P., for Authority to Launch and Operate a Hybrid Ku-band/C-band Satellite System at the 37.5° W.L. Orbit Location, *Memorandum Opinion and Order*, 16 FCC Rcd 12490, 12492 (para. 7) (Int'l Bur. 2001); GE American Communications, Inc., *Order and Authorization*, 10 FCC Rcd 13775, 13775-76 (para. 6) (Int'l Bur. 1995) (*GE Americom Replacement Order*); Loral Spacecom Corp., *Order and Authorization*, 13 FCC Rcd 16348, 16440 (para. 5) (Int'l Bur., Sat. and Rad. Div., 1995).

respectively.[238] We have also granted licenses for satellite land remote sensing systems outside of processing rounds.[239] Finally, when in-orbit, non-U.S.-licensed satellite operators seek access to the U.S. satellite market under the Commission's *DISCO II* framework,[240] we consider those requests outside of processing rounds. For these reasons, we conclude that neither the Communications Act nor *Ashbacker* require us to consider satellite license applications in processing rounds.

c. Qualifications

104. *Background.* PanAmSat assumes that the first-come, first-served approach would lead to issuing licenses without consideration of whether the licensee is qualified, and asserts that such a procedure would lead to litigation.[241] In contrast, Teledesic contends that the first-come, first-served approach would not and could not preclude the Commission from determining whether an applicant is qualified before granting a license.[242]

105. *Discussion.* We intend to consider an applicant's qualifications before granting it a license. We stated specifically in the *Space Station Reform NPRM* that we would place applications on public notice.[243] We also noted that the first-come, first-served procedure allows us to deny applications when appropriate, including but not limited to concerns raised in petitions to reject that application.[244]

d. Consistency with Commission Precedent

106. *Background.* In the *Notice*, the Commission observed that it has used a first-come, first-served procedure for FM radio licenses, and that this experience might provide a potentially sound, efficient basis for revising its satellite licensing process.[245] Some commenters claim that

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238 PanAmSat Licensee Corporation, Application for Authority to Launch and Operate a Hybrid Replacement Fixed Satellite Service Space Station, *Order and Authorization*, 15 FCC Rcd 22156, 22157-58 (para. 5) (Int'l Bur., Sat. and Rad. Div., 2000).

239 Application of EarthWatch Incorporated For Authority to Construct, Launch and Operate a Remote Sensing-Satellite System, *Order and Authorization*, 10 FCC Rcd 10467 (Int'l Bur., 1995) (*EarthWatch Authorization Order*). Remote-sensing satellites use in-orbit passive optical sensors to measure light reflected from the earth's surface, and then transmit that information to a central earth station where it is transformed into useable information about the "remotely sensed" object or phenomenon. *EarthWatch Authorization Order*, 10 FCC Rcd at 10467 (para. 2). Satellite remote-sensing systems can be used for mapping, resource conservation, law enforcement, national security, environmental monitoring, and forecasting functions. *EarthWatch Authorization Order*, 10 FCC Rcd at 10468 (para. 6).

240 *DISCO II*, 12 FCC Rcd at 24174 (para. 186). We describe the *DISCO II* framework in detail below.

241 PanAmSat Comments at 6-7. *See also* Hughes Comments at 11-12.

242 Teledesic Reply at 23-24.

243 *Space Station Reform NPRM*, 17 FCC Rcd at 3859 (para. 33).

244 *Space Station Reform NPRM*, 17 FCC Rcd at 3859 (para. 33).

245 *Space Station Reform NPRM*, 17 FCC Rcd at 3858-59 (paras. 29-31).

any reliance on the first-come, first-served procedure for broadcast licenses is misplaced, because that procedure is not the same as the Commission's satellite first-come, first-served proposal.[246] Hughes also notes that the Commission has employed processing rounds for satellite licenses for a long time, and asserts that the proposals in the *Notice* constitute an arbitrary and capricious change in policy unless the Commission provides an adequate explanation.[247] Teledesic replies, among other things, that the Commission has authority to change its procedures in rulemaking proceedings.[248]

107. *Discussion.* These contentions do not persuade us to reject the proposals in the *Notice*. Courts have held that the Commission had broad discretion to determine whether and when to initiate a rulemaking.[249] Courts have also held that administrative agencies are free to adjust or abandon its proposals in light of public comments or agency reconsideration.[250] Therefore, we disagree with Hughes that Commission precedents or practices can limit or preclude the Commission from inviting comment on any particular rule change in a rulemaking proceeding. Furthermore, in the *Notice*, the Commission explained in detail why the satellite licensing process needs reform.[251] Moreover, commenters overstate the extent to which we rely on the broadcast first-come, first-served procedure. The Commission stated that, because that procedure was successful, it might provide a good starting point for revising satellite licensing procedures. Specifically, "we *invite[d]* comment on appropriate procedural revisions consistent with a first-come, first-served approach, with certain modifications to make it fit satellite licenses."[252]

E. Details of First-Come, First-Served Procedure

1. General Framework

a. Establishment of Queues

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246 Hughes Comments at 14-20; Boeing Comments at 5-6; SIA Comments at 9.

247 Hughes Comments at 21-23. *See also* Hughes Comments at 4-5, *citing* Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Order on Reconsideration*, IB Docket No. 95-41, 16 FCC Rcd 15579 (2001) (*DISCO I Reconsideration Order*).

248 Teledesic Reply at 13-16, *citing* Committee for Effective Cellular Rules v. FCC, 53 F.3d 1309, 1317 (D.C. Cir. 1995), Florida Cellular Mobil Communications Corp. v. FCC, 28 F.3d 191, 196-97 (D.C. Cir. 1994), *cert. denied* 514 U.S. 1016 (1995); Rainbow Broadcasting Co. v. FCC, 949 F.2d 405, 409 (D.C. Cir. 1991).

249 *See* WWHT v. FCC, 656 F.2d 807 (D.C. Cir. 1981) (Commission has broad discretion to determine whether and when to initiate a rulemaking). *See also* Telecommunications Resellers Assn. v. FCC, 141 F.3d 1193, 1197 n.6 (D.C. Cir. 1998) (Commission has discretion to initiate rulemaking even in case where the court found that a rulemaking was not "necessary" to implement a statutory requirement).

250 Kooritsky v. Reich, 17 F.3d 1509, 1513 (D.C. Cir. 1994); International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 632 & n.51 (D.C. Cir. 1973).

251 *Space Station Reform NPRM*, 17 FCC Rcd at 3852-55 (paras. 12-20).

252 *Space Station Reform NPRM*, 17 FCC Rcd at 3859 (para. 31).

108. *Background.* Under the proposal in the *Notice*, we would consider applications for each particular geostationary satellite orbit (GSO) satellite license, one at a time in the order they were filed.[253] Teledesic suggests that the procedure would work better if the Commission maintained a single queue rather than a separate queue for each orbit location and/or frequency band. Under Teledesic's proposal, the Commission would review all satellite applications in the order they are filed, regardless of the orbit location and frequency band requested. Teledesic recommends further that the Commission grant each application that complies with the Commission's rules and does not conflict with any previously granted license, and otherwise deny the application.[254]

109. *Discussion.* We agree with Teledesic that establishing a separate queue for each GSO orbital location could unnecessarily complicate the first-come, first-served procedure. For example, if an applicant seeks authority for the 96° W.L. location, it is not clear whether that application should be included in the same queue as an application for the 95° W.L. location, or the 97° W.L. location, or whether all three applications should be included in the same queue. By including all applications in one queue, we can consider all issues relating to that application, such as compliance with the Commission's two-degree spacing framework and interference with adjacent satellites operating in the same frequency bands.[255] We will make a current list of applications in the queue publicly available.

110. We also recognize that some applications will necessarily require more time to review than others. In cases in which we are reviewing an application that raises such unusually complex issues, it would not serve the public interest to delay consideration of all subsequently filed applications while we resolve those complex issues. Therefore, we may act on some of those subsequently filed applications before we act on the complex application. Those subsequent applications will be considered one at a time in the order they are filed, but only if they are not mutually exclusive with a previously-filed application. We will act on those mutually exclusive applications after we act on the complex application.

b. Keeping Subsequently Filed Applications on File

111. *Background.* After we issue a license, we proposed keeping subsequently filed applications on file. If at any time the licensee loses its license, for failure to meet the first milestone or for any other reason, the next application in the queue would be considered. We also proposed returning the later-filed applications to those applicants if and when the licensee places its satellite or satellites in operation, and to return the associated application fee at that time upon the applicant's request.[256]

112. *Discussion.* All the parties commenting on this issue oppose keeping subsequent applications on file to be considered in the event that a licensee loses its license. Teledesic claims that keeping subsequent applications on file would encourage speculative or "place holder"

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253 *Space Station Reform NPRM*, 17 FCC Rcd at 3859 (para. 32).

254 Teledesic Comments at 13-17; Teledesic Reply at 20-21.

255 We discuss our treatment of hybrid applications, and applications with feeder link or intersatellite link requests below.

256 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34).

applications, and discourage applications by parties with innovative methods for using or sharing spectrum.[257] SES Americom argues that, if the lead applicant does not build its system, there would be delay before the next application could be processed, and this delay could discourage other parties from applying for competing licenses.[258] SES Americom also asserts that this delay could cause the United States to lose its international priority at the location in question.[259]

113. We decide not to keep subsequently filed applications on file. In other words, if an application reaches the front of the queue that conflicts with a previously granted license, we will deny the application rather than keeping the application on file in case the lead applicant does not construct its satellite system. We agree with Teledesic that keeping applications on file would encourage speculative or "place holder" applications. Moreover, we proposed keeping applications on file because we thought it would expedite reassignment of the orbit location in cases where a licensee loses a license. Under a single queue approach, we could reassign the orbit location just as quickly, or perhaps more quickly, if we accept new applications at the time the location becomes available. For these purposes, we will consider an orbit location to become "available" at the time we adopt an Order revoking a license in cases where we revoke the license, or upon release of a public notice announcing that a licensee has surrendered its license in cases where the licensee surrenders its license.[260] Thus, all parties potentially interested in providing satellite service from the orbit location at issue have an equal opportunity to apply for the license when that orbit location becomes available.[261] In summary, we will deny applications that conflict with previously granted applications because it is more likely to result in faster service to the public, and it will not disadvantage any party that may wish to apply for that orbit location if it becomes available.

114. Our decision not to keep subsequently filed applications on file pending the successful launch of a satellite moots the issue of whether to allow applicants to request the fees associated with their applications to be returned when a licensee launches its satellite.[262] Although no one commented specifically on this proposal, we emphasize that everyone commenting on the underlying proposal to keep subsequent applications on file opposed it.[263] Accordingly, parties applying for a license that is mutually exclusive with a previously filed application are on notice that they will not be able to request an application fee refund after the application is placed on public notice.

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257 Teledesic Comments at 17-20; Teledesic Reply at 19-20.

258 SES Americom Comments at 3-4.

259 SES Americom Comments at 3-4.

260 In the event that a licensee files a petition for reconsideration or application for review of a decision to revoke a license, we would grant the new license subject to the outcome of the reconsideration or review proceeding.

261 We will give applicants the option of assuming the previous licensee's ITU filing or submitting a new filing.

262 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34).

263 Teledesic Comments at 17-20; Teledesic Reply at 19-20; SES Americom Comments at 3-4.

c. Fees

115. *Background.* The Commission invited comment on allowing an applicant to request the return of the application fee if it voluntarily withdraws its application before it is placed on public notice.[264] After the application is placed on public notice, however, the Commission maintained that it would no longer be appropriate to return the application fee.[265] No one commented on this proposal.

116. *Discussion.* We adopt this proposal. Application fees represent the Commission's estimate, accepted by Congress, on the *average* cost to the Commission of providing the service.[266] The Commission incurs a cost regardless of the final result to the applicant, and it is on that basis that the Commission proposed to Congress that fixed processing costs be recovered from each applicant through fees.[267] Therefore, once that application has cleared the fee review process, its subsequent rejection will not result in a fee refund. The conclusion of the fee review process coincides with the date that the application is placed on public notice. Consequently, we adopt the proposal in the *Notice* to allow requests for the return of GSO-like satellite license application fees if the applicant voluntarily withdraws its application before it is placed on public notice. This procedure is also similar to the Commission's first-come, first-served rules for broadcast licenses, which were cited in the *Notice*.[268]

d. Service Rules

117. *Background.* In the *Notice*, the Commission proposed holding applications in abeyance if they are filed after the Commission has adopted a frequency allocation for the proposed service, but it has not adopted service rules.[269] Commenters offered differing opinions on this proposal. Teledesic opposes the proposal to hold applications in abeyance pending adoption of service rules, because service rules may not be needed in all cases.[270] CTIA opposes accepting satellite applications before service rules are adopted.[271]

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264 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34).

265 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34).

266 Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Memorandum Opinion and Order*, Gen. Docket No. 86-285, 3 FCC Rcd 5987, 5987 (para. 5) (1988).

267 Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order,* Gen. Docket No. 86-285, 2 FCC Rcd 947, 949 (para. 14) (1987).

268 *See Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 34), *citing* 47 C.F.R. § 1.1113(c).

269 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 35).

270 Teledesic Comments at 20-22.

271 CTIA Comments at 2-3.

118. *Discussion.* We reject the proposal in the *Notice* to hold in abeyance applications filed before service rules are adopted until the Commission adopts such rules. As we noted above in the context of adopting default service rules for NGSO-like satellite system applications, SIA and Intelsat argue that it is not necessary to develop service rules for each new satellite service, and recommend adopting uniform service rules for future satellite services.[272] We agree. Consequently, we adopt default service rules as suggested by SIA and Intelsat for GSO-like satellite system applications. In light of these default rules, we will be able to act on applications as they are filed and therefore need not consider further the issue of holding applications in abeyance pending final service rules.

119. None of the commenters in this proceeding propose specific default service rules. We will apply the two-degree-spacing requirements that we currently apply to GSO-like satellites in the C-band, Ku-band, and Ka-band satellites to GSO-like proposed satellites in different frequency bands.[273] Specifically, we will apply the requirements set forth in Appendix C. By applying these requirements, we can be assured that satellites in new bands will be designed to allow other satellites to operate in that band as close as two degrees away. This decision does not preclude us from considering other service rules, or from adopting other service rules in notice-and-comment rulemaking proceedings. Rather, when we issue licenses in new frequency bands that comply with our two-degree-spacing requirements, we will do so subject to any band-specific service rules, or rules for earth station coordination in shared bands, that we may adopt in the future.

120. In addition, as we did with respect to NGSO-like satellite licenses, we will require GSO-like satellite licensees to comply with applicable ITU requirements when we issue a license before we adopt frequency-band-specific service rules.[274] We will also require GSO-like satellite licensees operating in bands shared with other commercial operations to communicate only with earth stations that have been coordinated pursuant to Section 25.203. Finally, we will coordinate with NTIA regarding the operations of GSO-like satellite licensees operating in bands shared by Government and non-Government uses.

121. Establishing default service rules based on our two-degree-spacing policy provides an additional benefit by ensuring opportunities for competitive entry by GSO-like satellite operators. In addition, granting licenses before we adopt final service rules should allow licensees to meet their ITU bringing-into-use dates. Furthermore, unnecessary delay in considering satellite applications is contrary to the public interest, as we explained in the *Space Station Reform NPRM*.[275] Accordingly, we will not adopt CTIA's proposal to preclude consideration of satellite applications before we adopt service-band-specific service rules.

e. Frequency Allocations

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272 Section V.D.1., *citing* SIA Comments at 13-14; Intelsat Comments at 9.

273 We note, however, that the power flux density (PFD) limits applicable to the C-band, Ku-band, and Ka-band are not included in our default service rules for GSO-like satellites. Instead, licensees will be required to comply with the applicable PFD limits established in the ITU Radio Regulations for the frequency band in which they plan to operate.

274 Section V.D.1.

275 *Space Station Reform NPRM*, 17 FCC Rcd at 3852-53 (paras. 12-14).

122. *Background.* In cases where a party files a satellite application, and there is no international or domestic frequency allocation for the proposed service, the Commission proposed allowing the application to remain pending until the frequencies were allocated.[276] In the past, the Commission used the satellite system applications received in processing rounds as justification to pursue an international allocation for the service. In the *Notice*, the Commission expected to continue this practice.[277]

123. *Discussion.* CTIA opposes accepting satellite applications before frequency allocations are adopted.[278] Teledesic maintains that the Commission could decide on a case-by-case basis to hold applications in abeyance pending an international frequency allocation.[279]

124. Because it can take several years for the ITU to adopt an international frequency allocation, we will dismiss GSO-like satellite applications without prejudice as premature if the application is filed before the ITU adopts a necessary frequency allocation. In this Order above, we also decided to dismiss NGSO-like satellite applications filed before a needed international frequency allocation.[280] In the past, the Commission has accepted applications before needed international frequency allocations were adopted so that it could demonstrate that the frequency allocation is needed. We conclude here that a petition for rulemaking to amend the Table of Frequency Allocations[281] can serve the same purpose.[282] Furthermore, when an applicant files its application years before it will be possible to provide service, it is likely that the application may be a "place holder." Accordingly, we will dismiss satellite applications without prejudice as premature if the application is filed before the ITU adopts a necessary international frequency allocation. We will, however, consider applications filed after the ITU adopts an international frequency allocation but before the Commission adopts a domestic allocation. We will consider such applications only on a non-conforming, non-harmful interference basis to facilities operating consistent with the Table of Frequency Allocations.[283] In addition, parties seeking authority to operate on a non-conforming basis must request a waiver of Section 2.106 of the Commission's rules,[284] and must demonstrate good cause for that waiver.[285]

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276 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 37).

277 *Space Station Reform NPRM*, 17 FCC Rcd at 3860 (para. 37).

278 CTIA Comments at 2-3.

279 Teledesic Comments at 17.

280 Section V.D.1.

281 47 C.F.R. § 2.106.

282 Although we will no longer accept satellite applications before an international frequency allocation is adopted, we will submit advance notice publications to the ITU on behalf of U.S. entities before an international frequency allocation is adopted, provided that the entity agrees to pay all ITU cost recovery fees. Preparing an advance publication will not give a party any standing in any queue.

283 In the event that the Commission later adopts a frequency allocation, any entity operating on a non-conforming, non-harmful interference basis will be required to come into compliance with the rules governing that allocation.

284 47 C.F.R. § 2.106.

f. Feeder Links and Inter-Satellite Links

125. *Background.* In the *Notice*, the Commission observed that some MSS services use feeder links, which are radio links that transmit a user's messages in both directions between the system's satellites and the gateway earth station that connects the MSS network with the public switched telephone network.[286] Other satellite services employ inter-satellite service links, by which satellites in a constellation may communicate with each other.[287] The Commission proposed using the first-come, first-served procedure for applications for feeder links or inter-satellite links, and considering service link requests separately from requests for feeder links or intersatellite links.[288] The Commission recognized that this could result in granting service band authority and feeder link authority to different parties, but reasoned that applicants that are not authorized to use the feeder link frequencies they requested can apply for authority to operate in other feeder link frequencies.[289]

126. *Discussion.* SES Americom argues that considering feeder links and intersatellite links separately from service link requests would increase delay because the licensee could not proceed with its business plan until it receives all the authority it requests.[290] SES Americom is also concerned that considering these requests separately might prevent an applicant from obtaining all the authority it requests.[291]

127. We will consider requests for service link authority separately from feeder link and intersatellite link requests.[292] SES Americom is mistaken in assuming that separate processes for service link, feeder link, and intersatellite link requests would not allow us to issue satellite licenses faster than we could in a processing round. This is because, as we explained in the *Notice*, the current procedure is particularly slow when it is used to consider feeder link and intersatellite link requests.[293] Because both the modified processing round approach and the first-

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285 *See* WAIT Radio v. FCC, 418 F.2d 1153 (D.C.Cir., 1969); Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C.Cir., 1990).

286 *Space Station Reform NPRM*, 17 FCC Rcd at 3860-61 (para. 38), *citing 2 GHz Order*, 15 FCC Rcd at 13156 (para. 68).

287 *Space Station Reform NPRM*, 17 FCC Rcd at 3860-61 (para. 38), *citing 2 GHz Order*, 15 FCC Rcd at 13156 (para. 68); PanAmSat Licensee Corp. Application for Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 11534, 11535 (para. 4) (2001) (*PanAmSat Ka-band License Cancellation Review Order*).

288 *Space Station Reform NPRM*, 17 FCC Rcd at 3860-61 (para. 38).

289 *Space Station Reform NPRM*, 17 FCC Rcd at 3861 (para. 39).

290 SES Americom Comments at 7-8.

291 SES Americom Comments at 8.

292 Although we will consider these requests separately, we will allow applicants to include service link requests and feeder link or intersatellite link requests in the same application.

293 *Space Station Reform NPRM*, 17 FCC Rcd at 3853-54 (paras. 15-18).

come, first-served approach are faster than the current procedure, considering feeder link and intersatellite link requests separately from service link requests will eliminate substantial delay in service to the public. Moreover, under the single queue approach we adopt above, we will begin our consideration of a service link request and its associated feeder link or intersatellite link request at the same time. Thus, it is not likely that there will be a long time between our action on the service link request and our action on the feeder link or intersatellite link request. Conversely, on occasion, there have been long periods of time between service link authorizations and feeder link or intersatellite link authorizations under our current procedures.[294] In any case, we will continue to give licensees 30 days to decide whether to accept the license.

128. We disagree with SES Americom that considering feeder link and intersatellite link requests separately from service link requests, by itself, might prevent an applicant from obtaining all the authority it requests. In cases where both service link and feeder link requests are considered in modified processing rounds, all qualified applicants will get some service link authority and some feeder link authority. In cases where we consider a feeder link request pursuant to the first-come, first-served procedure, we would grant the request unless the applicant is not qualified, or we previously granted that authority to another applicant. Trying to combine our review of service link requests together with our review of feeder link and intersatellite link requests would not have any effect on our substantive decisions regarding each satellite application. It would make the analysis more complex and lengthen the procedure, however.

129. In addition, even if considering feeder link and intersatellite link requests separately from service link requests prevented an applicant from obtaining all the authority it requests, this would not warrant rejection of the Commission's proposal.[295] MSS systems have a great deal of flexibility. In cases where an applicant is not granted the specific feeder link or intersatellite link authority it requests, the licensee will often still be able to satisfy its requirements by applying for other frequencies. Alternatively, in cases where the licensee's MSS satellite system employs a GSO satellite, there are usually several orbital positions available at which a GSO satellite could communicate with the MSS system's gateway earth stations. This gives the licensee additional flexibility in provisioning its feeder links. In any case, as a result of eliminating the anti-trafficking rule for satellites,[296] an applicant will be able to negotiate with other licensees to purchase feeder link or intersatellite link authority.

130. Furthermore, we must consider service link requests separately from feeder link and intersatellite link requests in cases in which the service link application may not fall under the same classification as its associated feeder link or intersatellite link request. In such cases, considering service link and feeder link requests together would require the Commission to consider part of an application pursuant to a procedure that is not well suited to that request. By considering service link requests separately from feeder link or intersatellite link requests, we can ensure that this situation will not arise.

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294 *See, e.g.*, GE Americom Communications Galaxy Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service, *Order and Authorization*, 12 FCC Rcd 6475 (Int'l Bur., 1997); GE American Communications, Inc., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 16 FCC Rcd 2461 (Int'l Bur., 2001) (about three-and-a-half years between service band authorizations and intersatellite link authorizations in first Ka-band processing round).

295 SES Americom Comments at 8.

296 Section VII.D.

131. Accordingly, our procedures for applications for feeder link or intersatellite link authority will be consistent with our procedures for the associated service link application. In cases where the proposed service link is a GSO-like service, the first-come first-served procedure set forth in this section of the Order will apply. Examples of these applications are requests for an intersatellite link between two GSO satellites, and requests for a feeder link between a fixed earth station and a GSO satellite. In all other cases, where the associated service link application proposes an NGSO-like satellite system, the modified processing round procedure will apply.[297] We also note that licensees will be allowed 30 days to decide whether to accept any license grant.

2. Selection Among Mutually Exclusive Applications

132. *Background.* In the *Notice*, the Commission pointed out that a first-come, first-served procedure requires some method for deciding among two or more mutually exclusive space station applications that are filed on the same day.[298] As a first-tier selection mechanism, the Commission proposed mandatory electronic filing for satellite applications, and considering applications in the chronological order that they are filed, to the nearest thousandth of a second, regardless of whether it receives the application after the close of business or during a weekend.[299] As a second-tier selection mechanism, in the rare event that two applications requesting the same frequencies are filed at the same instant, the Commission proposed dividing the available spectrum by the number of mutually exclusive applicants.[300] The Commission noted that it adopted this approach in the *2 GHz Order*.[301]

133. *Discussion.* Teledesic supports basing the filing status of applications on the time each application is filed, measured to the nearest thousandth of a second, because it expects this will eliminate cases of mutually exclusivity.[302] Teledesic also argues that the Commission's proposed sharing method is acceptable, provided that there are few cases in which mutually exclusive applications must be considered together.[303]

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297 We discuss milestones for satellite systems using feeder links or intersatellite links in Section VII.C.7. below.

298 *Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45).

299 *Space Station Reform NPRM*, 17 FCC Rcd at 3862-63 (para. 45). As discussed below, we expect to manage this process by adopting our mandatory electronic filing proposal in this Order.

300 *Space Station Reform NPRM*, 17 FCC Rcd at 3863 (para. 46).

301 *Space Station Reform NPRM*, 17 FCC Rcd at 3863 (para. 46), *citing 2 GHz Order*, 15 FCC Rcd at 16138 (para. 16).

302 Teledesic Comments at 22; Teledesic Reply at 21-22.

303 Teledesic Comments at 23. In the event that the Commission adopts any procedure in which a large number of mutually exclusive applications must be considered together, Teledesic opposes band segmentation, claiming that there are other sharing methods that make more use of the available spectrum. Teledesic does not identify those other methods, however. Teledesic Comments at 22-24. Teledesic argues further that, in the event that we adopt a procedure that allows for mutually exclusive applications to be considered together, we should allow negotiations and not limit them to a 60-day period. Teledesic Comments at 23.

134. We adopt our proposal to base the filing status of satellite applications on the time each application is filed measured to the nearest thousandth of a second. As Teledesic points out, this will limit the number of applications that must be considered together, and so should enable us to expedite our review of satellite applications substantially. Also, as we explained above, there is nothing in the Communications Act that precludes us from defining mutual exclusivity narrowly, to facilitate the orderly administration of applications.[304]

135. We also adopt our proposed second-tier selection mechanism of dividing the spectrum at a particular orbit location evenly among the applicants in cases where two or more applicants file mutually exclusive applications at the same thousandth of a second. Because there should be very few cases in which multiple applicants file at the same thousandth of a second, if any, we do not envision a situation where a GSO-like satellite applicant will be authorized to use less than half the spectrum at a given orbit location.[305] In those rare cases in which a licensee is authorized to use only half the spectrum at a given orbit location, it may be possible for both licensees to provide a viable service with that spectrum. Further, by eliminating the anti-trafficking rule for satellites, licensees will be able to purchase each other's spectrum rights and responsibilities.

3. Amendments

136. *Background.* In the *Space Station Reform NPRM*, the Commission noted that its first-come, first-served procedure for broadcast license applications included a provision that amendments to an application that create a conflict with any other application filed prior to the amendment would cause the underlying application to lose its "status" relative to applications behind it in the queue.[306] The Commission observed further that a "major" amendment to a satellite application in a processing round is treated like a new application, and so a major amendment filed after a cut-off date causes the underlying application to be removed from the processing round.[307] Generally, a "major amendment" is one that increases the potential for interference to other applicants or licensees.[308] The Commission proposed revising its satellite application amendment rules so that a major amendment to a satellite application in a first-come, first-served procedure would cause the underlying application to be moved to the end of the queue.[309]

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[304] Section VI.D.9.b. above, *citing, e.g., Ashbacker*, 326 U.S. at 333 n.9.

[305] In fact, the only time we think that the probability of two or more applications file at the same thousandth of a second is more than *de minimis* is the time that the rule revisions we adopt in this Order take effect. We adopt safeguards for this possibility in Section VII.E. below.

[306] *Space Station Reform NPRM*, 17 FCC Rcd at 3866 (para. 55), *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 31).

[307] *Space Station Reform NPRM*, 17 FCC Rcd at 3866-67 (para. 56), *citing* 47 C.F.R. § 25.116.

[308] *Space Station Reform NPRM*, 17 FCC Rcd at 3866-67 (para. 56), *citing* 47 C.F.R. § 25.116(b)(1).

[309] *Space Station Reform NPRM*, 17 FCC Rcd at 3866-67 (para. 56).

137. Furthermore, to prevent applicants from bypassing this prohibition by merging with another company or transferring control of its business, the Commission proposed treating such transactions as major amendments that cause any pending applications filed by that applicant to be treated as a new application for purposes of determining processing order. In other words, the Commission did not propose a blanket prohibition on such transfers that otherwise meet the requirements of our rules, but rather proposed moving the pending applications of the parties in the transaction to the end of the relevant queue.[310] We did not expect adoption of this proposal to deter a significant number of legitimate business transactions. This was because, in most cases in which the parties to the transaction have assets or provide services, the effects of the transaction on their pending satellite applications would appear to be a small consideration, especially given that they would have a limited number of pending applications under our proposed rules.[311]

138. *Discussion.* Teledesic supports the Commission's proposal for considering amendments to pending applications in a first-come, first-served procedure.[312] SES Americom and Teledesic assert that treating a transfer of control application as a major amendment with respect to pending satellite license applications could deter applicants from entering into legitimate business transactions, however.[313]

139. Commenters focus their attention on the treatment of transfers of control as a major amendment, but do not specifically oppose the Commission's proposal to move an application to the end of the queue when the applicant files a major amendment to that application. Accordingly, we adopt this proposal. We will treat major amendments to GSO-like satellite license applications as newly filed applications. Major amendments will cause the license application to be moved to the end of the queue.

140. Transfers of control are treated as major amendments under our current rules.[314] Thus, in effect, SES Americom and Teledesic are requesting us to revise our rules so that transfer of control applications are no longer considered major amendments. We adopt the commenters' recommendation. The Commission did not intend the first-come, first-served procedure to deter legitimate business transactions. Accordingly, in light of the evidence in the record that continuing to treat transfers of control as major amendments in a first-come, first-served procedure might deter legitimate business transactions, we revise this rule. We also revise this rule for NGSO-like satellite system applications considered in modified processing rounds. We see no reason to treat transfers of control differently in the two licensing procedures we adopt in this Order.[315]

4. Modifications

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310 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

311 *Space Station Reform NPRM*, 17 FCC Rcd at 3865-66 (para. 53).

312 Teledesic Comments at 24.

313 SES Americom Comments at 5; Teledesic Comments at 30.

314 47 C.F.R. § 25.116(b)(3).

315 In the event of a merger, the limits on pending applications and unbuilt satellites will apply to the new company, and it will be required to withdraw applications to the extent that it exceeds those limits. *See* Section VII.E.3.

141. *Background.* Modifications are changes to a licensee's operating authority after the license has been granted. In the *Notice*, the Commission proposed retaining our current modification procedure as part of our first-come, first-served approach, with a few exceptions.[316] First, in those rare cases in which two or more applications are submitted at the same thousandth of a second, and we divide the spectrum at a particular orbit location evenly among the applicants pursuant to the second-tier selection mechanism,[317] the Commission proposed that it would not consider modification requests seeking to increase the licensee's bandwidth.[318] Second, for modification requests such as relocating a GSO satellite to a new orbital location, or to add additional operating spectrum, the Commission would place those modification requests behind other applications with priority in the queue, and behind any other previously filed conflicting application.[319]

142. *Discussion.* The Commission's proposal for considering modification requests in a first-come, first-served procedure is in accord with Teledesic's single-queue proposal that we adopted above.[320] Modification requests can be placed in the queue together with new license applications, and granted if they are not inconsistent with any previously granted license or modification.

143. Teledesic argues, however, that there are some license modifications that do not increase the likelihood of interference, and that the consideration of such modification requests should not be delayed pending considerations of other applications.[321] Teledesic recommends considering modification requests outside of any queue if they do not "degrade" the interference environment, and classifying such requests as "minor." Teledesic recommends classifying other modification requests as "major" and considering them only after consideration of previously filed applications.[322] Teledesic recommends making the determination between major and minor modification requests on a case-by-case basis.[323]

144. We do not adopt Teledesic's proposal at this time. The first-come, first-served procedure will enable the Commission to act on new satellite license applications more quickly

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316 *Space Station Reform NPRM*, 17 FCC Rcd at 3867 (para. 58).

317 Section VI.E.2. above.

318 *Space Station Reform NPRM*, 17 FCC Rcd at 3867 (para. 57).

319 *Space Station Reform NPRM*, 17 FCC Rcd at 3867 (para. 58).

320 Section VI.E.1.a.

321 Teledesic Comments at 25-26. According to Teledesic, "current law" distinguishes between major and minor modifications based on whether the modification increases or decreases the likelihood of interference. Teledesic Comments at 24-25. Teledesic is mistaken. Section 25.117(d) does not distinguish between major and minor modifications for space station licenses. This mistake does not, however, preclude us from considering Teledesic's proposal.

322 Teledesic Comments at 26-27.

323 Teledesic Comments at 27.

than is now possible,[324] and should expedite our review of modification requests as well. Further, deciding whether a proposed modification increases the potential for interference often requires a complex analysis. Unless we can categorically classify some modifications as "minor," conducting such a complex case-by-case analysis of modification requests as they are filed will delay action on other applications in the queue.[325]

5. Hybrids

145. *Background.* Hybrid satellites are satellites designed to operate in more than one frequency band.[326] We try to encourage deployment of hybrid satellites because there are cost benefits in implementing several service bands on a single space platform.[327] In the *Notice*, when the Commission was contemplating a first-come, first-served procedure with a separate queue for each orbit location and each band, the Commission proposed considering hybrid applications as follows. In cases where the applicant is first in the queue in both frequency bands, the Commission would simply grant the application. In cases where the applicant is first in the queue in only one frequency band, the Commission proposed to grant authority to operate in that band, and deny authority to operate in the other band.[328] In cases where one of the frequency bands has not been allocated for satellite service, or where the Commission has adopted service rules for only one of the bands, the Commission proposed granting authority to operate in one frequency band. The application would remain pending with respect to the band without the international or domestic frequency allocation or service rules, consistent with the Commission's proposed first-come, first-served procedure for single band satellites.[329]

146. *Discussion.* Hughes contends that a first-come, first-served procedure would discourage hybrid satellites, assuming that two separate queues would seldom be aligned.[330] SES Americom argues that a hybrid satellite applicant could be foreclosed from using a "critical frequency band" if another applicant filed for that band a few seconds before the hybrid applicant.[331] Teledesic contends that adopting its proposal to create a first-come, first-served procedure with one queue would simplify treatment of hybrid satellite applications more than the Commission's proposed first-come, first-served procedure.[332]

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[324] Section VI.D.2. above. *See also* Teledesic Comments at 27-28.

[325] Some parties have proposed such a categorization for space station modifications. We will consider those proposals in a future Order.

[326] *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 59).

[327] *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 59), *citing* Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order*, CC Docket No. 92-297, 12 FCC Rcd 22310, 22322 (para. 31) (1997) (*Ka-Band Service Rules Order*).

[328] *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 60).

[329] *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 61).

[330] Hughes Comments at 31.

[331] SES Americom Reply at 9.

[332] Teledesic Comments at 17.

147. In this Order above, we adopt a single queue to implement our first-come, first-served approach.[333] We explain that a single queue eliminates the issues raised by maintaining a queue for each orbit location, and allows us to expedite our process by reviewing applications in different bands at the same time. Consistent with that decision, we will consider together both frequency band requests in a hybrid satellite application for purposes of the first-come, first-served procedure.[334] Under this approach, when an applicant files a hybrid application, and that application reaches the head of the queue, we will grant it if the applicant is qualified, and granting authority to operate in that band would not conflict with any previously filed license. In cases where the applicant meets these standards for both requested frequency bands,[335] we will authorize the requested hybrid satellite. In other cases, we may authorize the applicant to operate in only one of its requested frequency bands. Also, as we proposed in the *Notice*, our treatment of hybrid satellite applications in which we have not adopted a frequency allocation or service rules for one or both of the bands will be consistent with the procedure we adopted above for single band satellites.[336] In other words, if we have not adopted service rules for one frequency band in a hybrid satellite application, we will authorize the applicant to operate in that band if it shows that it will be 2° compliant, and subject to any future service rules we may adopt.[337] If we have not adopted a domestic frequency allocation in one band, we will dismiss the application in part with respect to that band, or grant operating authority on a non-conforming, non-interference basis.[338]

148. Finally, we conclude that SES Americom's concern, that some hybrid satellite applicants may not receive authority to operate in all the frequency bands they request, does not justify rejection of the first-come, first-served approach, either generally or for hybrid satellite applications. Satellite operators under the current procedure may not necessarily be awarded all of the spectrum requested.[339] Moreover, eliminating the anti-trafficking rule will allow a licensee to purchase spectrum rights from another licensee in a number of cases, which would allow it to construct, launch, and operate its proposed hybrid satellite. Finally, we emphasize that one of the

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[333] Section VI.E.1.a.

[334] An applicant filing a hybrid satellite applications will still be required to pay the fee for one satellite application, however.

[335] As we did in the *Space Station Reform NPRM*, we assume that the application is acceptable for filing, and seeks authority to operate in two frequency bands to simplify this discussion. *Space Station Reform NPRM*, 17 FCC Rcd at 3868 n.71.

[336] *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 61).

[337] Section VI.E.1.d.

[338] Section VI.E.1.e.

[339] Application of Columbia Communications Corporation for Modification of Authorization to Permit Operation of Ku-band Satellite Capacity on the Columbia 515 Satellite Located at 37.7° West Longitude, *Memorandum Opinion and Order*, 16 FCC Rcd 12480 (Int'l Bur. 2001); Loral Space & Communication Ltd., f/k/a Orion Atlantic, L.P., for Authority to Launch and Operate a Hybrid Ku-band/C-band Satellite System at the 37.5° W.L. Orbit Location, *Memorandum Opinion and Order*, 16 FCC Rcd 12490 (Int'l Bur. 2001); Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15571 (para. 10) (Int'l Bur. 2000) (*First Columbia Milestone Order*).

overriding policy goals of this proceeding is to enable customers to get satellite service more quickly than is usually possible under our current procedure. Although we recognize that there are cost benefits in hybrid satellites,[340] those benefits do not outweigh this overriding policy goal of expediting service to the public.[341]

6. Filing Window

149. *Background.* In the *Notice*, the Commission noted that its procedure for broadcast licenses included an initial 30-day filing window. All applications filed during that window were considered together on a consolidated basis, while the first-come, first-served procedure applied only to applications filed after the close of the window.[342] We did not include a filing window in our first-come, first-served proposal for satellite license applications.[343]

150. *Discussion.* Teledesic and Intelsat supports the Commission's proposal.[344] On the other hand, Hughes argues that, whenever an application is filed, the Commission must give other parties an opportunity to file applications that are mutually exclusive with the first application.[345] We will not include a filing window in our first-come, first-served procedure for GSO-like satellites. We have previously considered and rejected Hughes's argument that the Communications Act requires the Commission to give applicants an opportunity to file mutually exclusive applications.[346]

F. Modified First-Come, First Served Proposal

151. *Background.* Intelsat proposes something it calls the modified first-come, first-served procedure.[347] Intelsat intends all of its proposals to be considered together as a single package.[348] This package of proposals may be summarized as follows:

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340 *Space Station Reform NPRM*, 17 FCC Rcd at 3868 (para. 59), *citing Ka-band Service Rules Order*, 12 FCC Rcd at 22322 (para. 31).

341 When a satellite operator proposed modifying its hybrid C/Ku-band satellite license to authorize two single-band satellites, the Bureau found that there were no compelling public interest considerations weighing against the modification request because the modification would "permit the expedited introduction of Ku-band service to customers. . . " Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, Application of GE American Communications, Inc., for Modification of Authorization to Construct, Launch, and Operate a Space Station in the Fixed-Satellite Service, *Memorandum Opinion and Order*, 14 FCC Rcd 686, 688 (para. 7) (Int'l Bur., Sat. and Rad. Div., 1998).

342 *Space Station Reform NPRM*, 17 FCC Rcd at 3862 (para. 42), *citing TV and FM Broadcast Order*, 50 Fed. Reg. at 19940-41 (paras. 28-30).

343 *Space Station Reform NPRM*, 17 FCC Rcd at 3862 (paras. 43-44).

344 Teledesic Comments at 22; Intelsat Comments at 13-14.

345 Hughes Comments at 19-20.

346 Section VI.D.9.b. above; *Wireless Cable Reconsideration Order*, 6 FCC Rcd at 6776 (paras. 61-62).

347 Intelsat Comments at 8.

- Applies only to new license applications for orbital locations and spectrum with established service rules and frequency allocations, such as the C-band, Ku-band, and Ka-band, but not to services where band-segmentation is preferable, such as MSS. In other words, Intelsat would not apply this procedure to applications for authority to operate in a frequency band where needed service rules or allocations have not yet been adopted.[349]
- Applicants are allowed "partial fungibility." Under this proposal, an applicant that is second-in-line in a given queue is permitted to switch its application to a GSO orbit location for which there are no pending applications. If two or more second-in-line applicants switch to the same location, however, they would be allowed to switch back to their originally requested location.[350]
- The Commission must strenuously enforce milestone obligations.[351]
- Applicants must provide evidence of a $10 million bond, payable to the U.S. Treasury, upon failure to meet a milestone or revocation of a license for any other reason.[352]
- Applicants can transfer licenses and applications at cost.[353]
- The Commission must act on applications within 90 days.[354]

152. SES Americom argues that limiting the first-come, first-served proposal to "established bands" would not address any of the concerns that commenters have raised about potential for speculation in or the legal basis for a first-come, first-served procedure.[355] SES Americom also questions whether a satellite service should be considered "established" as soon as the Commission adopts service rules and frequency allocations.[356] SES Americom criticizes Intelsat's partial fungibility proposal because it could lead to multiple applicants switching among queues on an almost constant basis.[357]

153. *Discussion.* In this Order, we have adopted portions of Intelsat's modified first-come, first-served approach. As Intelsat suggests, we have adopted a first-come, first-served approach for GSO-like systems but not for NGSO-like systems, where we agree that a band-

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348 Intelsat Comments at 3.

349 Intelsat Comments at 9-10.

350 Intelsat Comments at 15-17.

351 Intelsat Comments at 19-21.

352 Intelsat Comments at 10-12.

353 *Intelsat Comments at* 17-19.

354 Intelsat Comments at 14-15. *See also* Teledesic Reply at 24 (acting on applications within 90 to 180 days would deter speculation).

355 SES Americom Reply at 14-15.

356 SES Americom Reply at 15-16.

357 SES Americom Reply at 17.

segmentation framework is more appropriate. We also agree that licensees should be able to freely transfer licenses and that we should strictly enforce milestone conditions.

154. Nevertheless, limiting these reforms to "established" frequency bands would make them inapplicable to the vast majority of future satellite applications. As we explained previously, we find that the first-come, first-served framework, as adopted here, will allow us to act on applications involving "new" frequency bands efficiently and effectively. Nor will we adopt Intelsat's proposal to permit second-in-line applicants to switch to a queue for another GSO orbital location, because we decided above not to maintain separate queues for each orbit location.[358] Moreover, to the extent that Intelsat is in effect proposing that we allow applicants to make major amendments to their applications to state new orbit locations without moving to the end of the queue, we reject this proposal. It would unreasonably encourage speculation to allow applicants to select any orbit location available at the time their application reaches the head of the queue, rather than submitting a substantially complete satellite application specifying an orbit location. For this reason, this would be an unreasonable departure from the Commission's first-come, first-served procedure for broadcast licenses.[359] Finally, we consider below Intelsat's proposed bond-posting requirement and mandatory electronic filing requirement.

G. Fungibility Policy

155. *Background.* In Section V. of this Order above, we considered many proposals from the *Notice* for revising the current processing round procedure. Another revision proposed in the *Notice* was to eliminate the fungibility policy.[360] In the *Notice*, the Commission noted that it has historically maintained a policy of treating GSO orbital locations as fungible in the context of processing rounds in the fixed satellite service as one means of resolving mutually exclusive situations in those processing rounds.[361] The fungibility policy is applied where it is not possible to assign to each participant in a processing round the exact orbital location that is requested. In those situations, rather than institute lengthy proceedings to decide which of several applicants should be assigned to a requested location, we assign some other GSO location to that applicant.[362]

156. The Commission proposed to streamline processing rounds by eliminating the fungibility policy.[363] We observed that working to find a way to accommodate each applicant as

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[358] Section VI.E.1.a. Because we do not adopt Intelsat's proposals as a single package, we need not determine whether Intelsat's proposals would have enabled us to act on satellite applications within 90 days as Intelsat claims. *See* Intelsat Comments at 14-15.

[359] *TV and FM Broadcast Order*, 50 Fed. Reg. at 19941 (para. 31), *cited in Space Station Reform NPRM*, 17 FCC Rcd at 3866 (para. 55).

[360] *Space Station Reform NPRM*, 17 FCC Rcd at 3874-75 (paras. 79-81).

[361] *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 79), *citing* Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service, *Memorandum Opinion and Order*, 84 FCC 2d 584, 601 (para. 45) (1981) (*1980 Assignment Order*); *Separate Systems Order*, 101 FCC 2d at 1176 n.168.

[362] *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 79).

[363] *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

much as possible can substantially increase the time needed to complete a processing round.[364] We further observed that the backlog in publishing ITU submissions makes this accommodation more difficult, because it is difficult to determine whether we are assigning an applicant to an orbit location that has been encumbered by an ITU filing from another Administration.[365] We reasoned that relying on applicants to take responsibility for requesting orbit locations that are not encumbered by another Administration's ITU submission would enable us to complete processing rounds more quickly.[366] Accordingly, we proposed eliminating the fungibility policy because it would eliminate the need to make these determinations.[367]

157. *Pleadings.* Several commenters claim that the fungibility policy is necessary to resolve mutually exclusive situations in processing rounds.[368] SIA and PanAmSat disagree with the Commission that the ITU's backlog in publishing ITU submissions warrants eliminating the fungibility policy, because the ITU maintains a database of filed but unpublished ITU submissions.[369] SIA also asserts that the Commission has not in the past delayed issuing licenses until the ITU has assigned the orbit location to a United States licensee.[370] Inmarsat maintains that eliminating the fungibility policy would preclude the Commission from reassigning a satellite operator to a new location in cases involving coordination of U.S.-licensed and non-U.S.-licensed satellite systems.[371] Alternatively, Teledesic recommends eliminating the fungibility policy because GSO orbital locations are not in fact fungible in the fixed satellite service.[372]

158. *Discussion.* Under the procedures we adopt here, the fungibility policy is unnecessary because it will no longer apply to any satellite applications. As we explained in the *Notice*, the fungibility policy applies only to GSO-like satellite applications considered in processing rounds.[373] Thus, under our new procedures, the fungibility policy cannot be applied to GSO-like applications because we will consider those applications in a first-come, first-served procedure, not in processing rounds. We assume that applicants are willing to be licensed for the orbital locations for which they apply, and that they will either take the location subject to any encumbrances such as ITU priority, and at their own risk, or will reject the license. Moreover, the fungibility policy has never been applicable to NGSO-like satellite applications. The

364 *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

365 *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

366 *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

367 *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

368 SIA Space Station Comments at 27; PanAmSat Space Station Comments at 11; Hughes Space Station Comments at 48-49; SES Americom Space Station Reply at 10.

369 SIA Space Station Comments at 27; PanAmSat Space Station Comments at 11-12.

370 SIA Space Station Comments at 11, 27.

371 Inmarsat Space Station Comments at 8-11, *citing* Assignment of Orbital Locations to Space Stations in the Fixed-Satellite Service, *Memorandum Opinion and Order*, 13 FCC Rcd 13863 (Int'l Bur. 1998).

372 Teledesic Space Station Comments at 33-34.

373 *Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 80).

fungibility policy applies to GSO orbital locations, not NGSO orbital planes. Finally, the fungibility policy is unnecessary for GSO MSS satellite applications, which are "NGSO-like," and so they will be considered pursuant to the modified processing round approach. Such satellites must operate in different frequency band segments to avoid becoming mutually exclusive, and therefore may be essentially collocated in the GSO orbit, which in turn obviates the need for the fungibility policy.

159. We disagree with Inmarsat that elimination of the fungibility policy would preclude us from considering licensees' modification applications requesting relocation of a satellite. By definition, modification applications request revisions to a license *after* it is issued. Under the fungibility policy, the Commission treated FSS orbital locations as fungible as one means of resolving mutually exclusive situations *in the context of processing rounds*.[374] In other words, the fungibility policy applies only at the time licenses are issued in a processing round context, not afterwards. Thus, eliminating the fungibility policy will have no effect on future modification applications.

VII. OTHER ISSUES

A. Background

160. The Commission invited comment on several proposals intended to make the satellite application process more efficient, and thus help speed provision of service to the public, regardless of whether we adopt the first-come, first-served option or modify the current procedure.[375] We discuss each of those proposals below.

B. Financial Qualifications

1. Eliminating the Financial Qualification Requirement

161. *Background.* Applicants for satellite licenses must now show generally that they have the financial resources to construct and launch a satellite or satellite constellation, and to operate it for one year.[376] In the *Notice*, the Commission observed that this requirement and its milestone requirements serve very similar purposes.[377] The Commission explained that it examines financial qualifications to help ensure that licensees have the financial resources to proceed with their plans so that service is promptly made available to users.[378] Similarly,

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[374] *See Space Station Reform NPRM*, 17 FCC Rcd at 3874 (para. 79), *citing 1980 Assignment Order*, 84 FCC 2d at 601 (para. 45); *Separate Systems Order*, 101 FCC 2d at 1176 n.168.

[375] *See Space Station Reform NPRM*, 17 FCC Rcd at 3880 (para. 98).

[376] *Space Station Reform NPRM*, 17 FCC Rcd at 3880 (para. 100), *citing* 47 C.F.R. § 25.114(c)(13) and rules cited therein.

[377] *Space Station Reform NPRM*, 17 FCC Rcd at 3881 (para. 102).

[378] *Space Station Reform NPRM*, 17 FCC Rcd at 3880 (para. 100), *citing, e.g.*, Amendment to the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, *Second Report and Order*, Gen. Docket No. 84-689, 104 FCC 2d 650, 663 (para. 23) (1986) (*RDSS Second Report and Order*); Norris Satellite Communications, Inc., *Order and Authorization*, 7 FCC Rcd 4289, 4291 (para. 11) (1992).

milestone deadlines ensure that licensees construct and launch their systems in a timely manner.[379] Accordingly, the Commission invited comment on eliminating the financial qualification requirements currently in its rules, and relying exclusively on our milestone policy to ensure that licensees provide service in a timely fashion.[380]

162. *Discussion.* Several commenters oppose eliminating the financial showing and stress that it is necessary to ensure that prospective licensees are able to construct their proposed satellite systems.[381] Teledesic, however, supports the proposal to eliminate financial qualification requirements and agrees with the Commission that milestones serve many of the same purposes.[382] Teledesic argues further that there have been several cases of licensees who failed to launch their satellites despite meeting the financial qualification requirements, and licensees who launched their satellites based on attracting investment with a sound business plan rather than relying on assets available at the time an application is filed, as our financial qualification requirements primarily measure.[383]

163. Some parties suggest relaxing the financial qualification requirement rather than eliminating it. PanAmSat specifically proposes that the Commission require applicants to demonstrate financing for a substantial portion (*e.g.*, 30 percent) of their costs when they file or require applicants to demonstrate financing for an additional portion of costs after a later specified period.[384] Additionally, PanAmSat proposes that the Commission refrain from requiring a financial showing for new services or frequencies until the process for allocating frequencies internationally and domestically has been completed and the Commission has adopted service rules.[385] SIA and Inmarsat also argue that the Commission should not eliminate its financial qualification requirement, but instead should revise the requirement to accommodate new entrants in the industry.[386]

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379 *Space Station Reform NPRM*, 17 FCC Rcd at 3881 (para. 101), *citing First Columbia Milestone Order*, 15 FCC Rcd at 15571 (para. 11); National Exchange Satellite, Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 1990, 1991 (para. 8) (Com. Car. Bur. 1992) (*Nexsat Order*), *citing* MCI Communications Corporation, *Memorandum Opinion and Order*, 2 FCC Rcd 233 (1987) (*MCI Order*).

380 *Space Station Reform NPRM*, 17 FCC Rcd at 3881 (para. 102).

381 Hughes Comments at 43-45; Boeing Comments at 10-12; Intelsat Comments at 10-12; SES Americom Reply at 12.

382 Teledesic Comments at 41-42.

383 According to Teledesic, only 11 of 19 participants in the 1983 C and Ku-band processing round launched their satellites, 3 of 23 participants in the 1985 processing round, and 11 of 19 in the 1988 processing round. Teledesic Reply at 26-28. *See also* Application of TRW, Inc., for Authority to Construct, Launch, and Operate a Low Earth Orbit Satellite System in the 1610-1626.5 MHz/2483.5-2500 MH Band, *Order and Authorization*, 10 FCC Rcd 2263, 2264 (para. 6) (Int'l Bur. 1995), *citied in* Teledesic Reply at 27.

384 PanAmSat Comments at 15-16.

385 PanAmSat Comments at 15-16.

386 SIA Comments at 34; Inmarsat Comments at 11-12.